

Clearance
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11 August 1978

MEMORANDUM FOR: Legislative Counsel
Deputy Legislative Counsel

FROM: Acting Chief, Coordination and Review Staff

SUBJECT: Compartmented Clearances/"S. Res. 4"
Problems

25X1 1. ☐ I have confirmed my interpretation of P. L. 95-94 with Bob Malstrom, in the Secretary of the Senate's office, and with the Senate Legislative Counsel. The currently operative legislation was designed to give Senators greater flexibility in utilizing their allowances for administrative, clerical and legislative staffs. A Senator who wants to have an individual responsive to him aid in his committee work basically has two choices:

- Under Section 111(b)(2), he can arrange for the appointment of such an individual to the staff of the committee or subcommittee. These people become regular committee staffers; they are paid by the committee and are subject to all rules applicable to any other committee staffer. In short, these are not "S. Res. 4" problems at all, and we have no problem in according them compartmented clearances. The SSCI staff is set up along these lines. It is important to note that when a Senator arranges for one of these appointments, there is an automatic reduction in the amount of money authorized for compensation to employees in his own office. There is no automatic increase in the committee's appropriation. The funds deducted from the amount available for payment of the Senator's personal staff revert to the Treasury. If the committee does not have enough money available to pay its new staffer, it must seek a supplemental appropriation.

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--The Senator's second choice is to use Section III(c), which is a codification of 705(c)(1) of S. Res. 4. Here a Senator designates employees in his office to assist him in committee work. The designee is accorded "all the privileges" of a professional staff member of the committee (except for the key item we are concerned with), but he remains an employee of the individual Senator. He is paid out of the appropriation for the Senator's staff; not by the committee, and he is not responsible to the committee staff chief. This is the classic "S. Res. 4" problem.

25X1 2. ☐ I believe there are two alternative ways to proceed:

(a) We can remain firm in our position that compartmented clearances will not be granted to "S. Res. 4" i.e., Section III(c)] staffers. In dealing with problems such as the Morgan/Stirk and Bumpers/Parkinson cases, we can stress that nearly everything the staffer needs to know to be of use to the Senator can be provided to the staffer on a noncompartmented basis, and that we always stand ready to brief the Senator personally. We can then argue that if a Senator still feels strongly about his staffer's need for a compartmented clearance, the solution is for the Senator to secure the staffer's appointment to the committee staff under Section III(b)(2).

(b) The alternative is to modify Section D of the DCI's Guidelines and Procedures by adding the following provision at the end of that Section: "The DCI will, however, consider on a case-by-case basis the granting of compartmented clearances to employees designated in accordance with Section III(c) of the Legislative Branch Appropriation Act of 1978 (P.L. 95-94, 91 Stat. 653). Requests for such clearances will be considered only when made in writing by the Senator making the designation, endorsed in writing by the Chairman of the committee with respect to which the designation is made, and accompanied by a written pledge by the designee to abide by all rules and regulations pertaining to the handling of classified material that are applicable to regular staff members of the committee."

I strongly recommend alternative (a) for the reasons set out below.

25X1 3. ☐ Alternative (a) preserves the integrity of the DCI's recently promulgated guidelines, brings to the attention of Senators like Morgan and Bumpers the fact that they have the solution to their problem in their own hands, and leaves the matter to be negotiated between Senators and committee Chairmen. The end result could be larger SSCI-type staffs, but from our point of view this would be preferable to numerous "S. Res. 4" staffers with compartmented clearances.

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4. ☐ Alternative (b) would:
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- Undercut the thrust of the President's and the DCI's expressed determination to reduce access to sensitive intelligence information.
- Endanger DOD and NSA acceptance of the new program for centralized OLC control of compartmented clearances for the Legislative Branch. The Secretary of Defense and head of NSA could conclude that they were misled as to the DCI's intentions.
- Create problems in our relationships with committee staff chiefs who have been helpful to us.
- Create a potentially large demand for compartmented clearances. While we can eliminate the SSCI membership from our calculations, an argument could be made that "S. Res. 4" staffers on Appropriations and Armed Services Subcommittees other than Defense and Intelligence have a need for access. Opening the door to "S. Res. 4" staffers weakens our arguments for holding down compartmented clearances among regular staff of nonoversight committees, as well as the GAO and others ☐

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☐ We must also consider the possibility that personal staffers in the House will secure an equivalent to Section 111(c) and then also seek compartmented clearances. Thus, while we can probably calculate the number of more or less immediate requests we would receive under alternative (b), the potential over the long term would be much greater.

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5. ☐ An argument probably can be made that the compartmented classification system is itself something of an anachronism, and if I were considering the "S. Res. 4" problem in the abstract, I think I might come out somewhat differently on this issue. But given the dynamics of the present situation (expressions of Presidential and DCI concern about leaks, the launching of a new program to centralize control of compartmented clearances on the Hill, etc.), I think we would be unwise to recommend a course of action [alternative (b)] that would be interpreted as a major retreat. ☐ who have dealt with this problem far longer than I, have reviewed this memorandum and endorse its recommendation.

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Attachments

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OLC:GMC:mlg (11 August 1978)

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91 STAT. 662

PUBLIC LAW 95-94—AUG. 5, 1977

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Ante, p. 82.
2 USC 61h-6.

SEC. 110. (a) Section 101 of the Supplemental Appropriations Act, 1977, is amended—

(1) by striking out "Majority Leader of the Senate and the Minority Leader of the Senate" in the first sentence and inserting in lieu thereof "Majority Leader, Minority Leader, and Secretary of the Senate"; and

(2) by striking out "Majority Leader and the Minority Leader" in the last sentence and inserting in lieu thereof "Majority Leader, Minority Leader, and Secretary of the Senate".

(b) The amendments made by subsection (a) shall take effect on

Effective date.
2 USC 61h-6
note.
2 USC 61-1 note.

August 1, 1977.
SEC. 111. (a) Except as provided in subsection (b), the aggregate of the gross compensation which may be paid to employees in the office of a Senator during each fiscal year under section 105(d) of the Legislative Branch Appropriation Act, 1968, as amended and modified (2 U.S.C. 61-1(d)), is increased by an amount equal to three times the amount referred to in section 105(e)(1) of such Act, as amended and modified.

(b) (1) In the case of a Senator who is the chairman or ranking minority member of any committee, or of any subcommittee that receives funding to employ staff assistance separately from the funding authority for staff of the full committee, the amount referred to in subsection (a) shall be reduced by the amount referred to in section 105(e)(1) of the Legislative Branch Appropriation Act, 1968, as amended and modified, for each such committee or subcommittee.

(2) In the case of a Senator who is authorized by a committee, a subcommittee thereof, or the chairman of a committee or subcommittee, as appropriate, to recommend or approve the appointment to the staff of such committee or subcommittee of one or more individuals for the purpose of assisting such Senator solely and directly in his duties as a member of such committee or subcommittee, the amount referred to in subsection (a) shall be reduced, for each such committee or subcommittee, by an amount equal to (A) the aggregate annual gross rates of compensation of all staff employees of that committee or subcommittee (i) whose appointment is made, approved, or recommended and (ii) whose continued employment is not disapproved by such Senator, if such employees are employed for the purpose of assisting such Senator solely and directly in his duties as a member of such committee or subcommittee thereof as the case may be, or (B) the amount referred to in section 105(e)(1) of the Legislative Branch Appropriation Act, 1968, as amended and modified, whichever is less.

(3) In the case of a Senator who is serving on more than three committees, one of the committees on which he is serving, as selected by him, shall not be taken into account for purposes of paragraphs (1) and (2). Any such Senator shall notify the Secretary of the Senate of the committee selected by him under this paragraph.

2 USC 72a-1e.

(c) (1) A Senator may designate employees in his office to assist him in connection with his membership on committees of the Senate. An employee may be designated with respect to only one committee.

(2) An employee designated by a Senator under this subsection shall be certified by him to the chairman and ranking minority member of the committee with respect to which such designation is made. Such employee shall be accorded all privileges of a professional staff member (whether permanent or investigatory) of such committee including access to all committee sessions and files, except that any such committee may restrict access to its sessions to one staff member per Senator at a time and require, if classified material is being

handled or discussed, a security clearance before discussion of it. Nothing is construed to prohibit a committee with respect to the application of the policies and provisions of section 705(c)(1) or section 106(c)(1) of the

(3) A Senator shall not be a member of a committee under this subsection with respect to

(d) The second sentence of the Branch Appropriation Act, 1977, is amended—

(1) by inserting "three employees may be referred to in subsection (b)"

(2) by striking out "The amendments made by section 6(c) of the Order of September 8, 1976, under section 106 of the Act of 1970."

(e) (1) Section 106 of the Act (other than subsection (c))

(2) As an exercise of the authority conferred by section 705 of Senate Resolution 100, the Act (thereof) is repealed.

(f) This section, and the repeals made by subsection (e), are repealed.

SEC. 112. (a) Section 105 of the Act, 1973 (2 U.S.C. 58(a))

(1) by striking out "the following:

"(1) official telecommunications services;"

(2) by striking out paragraph (2) of the following:

"(8) subject to the amount of travel expenses incurred by such employee; and

"(9) reimbursement of expenses as the Senator's official office expenses, including transportation expenses incurred by such employee in the performance of his official duties in the area of Washington, D.C., of employees assigned to such committee or subcommittee incurred by such employee in the general course of his official duties, only to the extent of the amount of the year ten percent of the amount paid to or on behalf of such employee in the calendar year."; and

(3) by striking out "in lieu thereof the following employees under this

PUBLIC LAW 95-94--AUG. 5, 1977

91 STAT. 663

handled or discussed, that any staff member possess the appropriate security clearance before being allowed access to such material or to discussion of it. Nothing contained in this paragraph shall be construed to prohibit a committee from adopting policies and practices with respect to the application of this subsection which are similar to the policies and practices adopted with respect to the application of section 705(c)(1) of Senate Resolution 4, 95th Congress, and section 106(c)(1) of the Supplemental Appropriations Act, 1977.

Infra.

(3) A Senator shall notify the chairman and ranking minority member of a committee whenever a designation of an employee under this subsection with respect to such committee is terminated.

(d) The second sentence of section 105(d)(2) of the Legislative Branch Appropriation Act, 1968, as amended and modified, is amended--

2 USC 61-1.

(1) by inserting after "(i)" the following: "the salaries of three employees may be fixed at rates of not more than the rate referred to in subsection (e)(1), (ii)"; and

(2) by striking out "(ii)" and inserting in lieu thereof "(iii)". The amendments made by this subsection shall have no effect on section 6(c) of the Order of the President pro tempore issued on October 8, 1976, under section 4 of the Federal Pay Comparability Act of 1970.

2 USC 61-1 note.

2 USC 60a-1.

(e)(1) Section 106 of the Supplemental Appropriations Act, 1977 (other than subsection (f) thereof) is repealed.

Repeal.
2 USC 72a-1d
and notes.

(2) As an exercise of the rulemaking power of the Senate, section 705 of Senate Resolution 4, 95th Congress (other than subsection (h) thereof) is repealed.

(f) This section, and the amendments made by subsection (d) and the repeals made by subsection (e), shall take effect on October 1, 1977.

Effective date.
2 USC 72a-1e
note.

SEC. 112. (a) Section 506(a) of the Supplemental Appropriations Act, 1973 (2 U.S.C. 58(a)) is amended--

(1) by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) official telegrams and long-distance telephone calls and related services;"

(2) by striking out "and" at the end of paragraph (7) and by striking out paragraph (8) and inserting in lieu thereof the following:

"(8) subject to the provisions of subsection (e), reimbursement of travel expenses incurred by the Senator and employees in his office; and

"(9) reimbursement to each Senator for such other official expenses as the Senator determines are necessary (not including official office expenses incurred in his State, but including actual transportation expenses incurred by the Senator and employees in his office in the performance of official business in the metropolitan area of Washington, District of Columbia, or, in the case of employees assigned to an office of the Senator in his home State, incurred by such employees in the performance of official business in the general vicinity of the office to which assigned), but only to the extent such expenses do not exceed for any calendar year ten percent of the total amount of expenses authorized to be paid to or on behalf of such Senator under this section for such calendar year."; and

(3) by striking out the last sentence thereof and inserting in lieu thereof the following: "Reimbursement to a Senator and his employees under this section shall be made only upon presentation

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